BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion investigating whether to assess the Nebraska Universal Service Fund surcharge on broadband services.	)))))	Application No. NUSF-41/PI-89

TESTIMONY OF TOM BULLOCK SUBMITTED ON BEHALF OF THE RURAL INDEPENDENT COMPANIES

Introduction

Good morning, Mr. Chairman, members of the Commission. It is a pleasure and an honor to appear before you today. My name is Tom Bullock. I am a Consultant with TELEC Consulting Resources, and my comments here today are made on behalf of the twenty-two rural Nebraska telecommunications companies identified below.[1] These Companies, as do I, appreciate the opportunity to address the question before you today - namely, whether broadband services, such as cable modem or DSL, or broadband services delivered via terrestrial or satellite radio transmission, or perhaps over power lines - whether broadband services, generally, should contribute to the Nebraska Universal Service Fund through assessment of the NUSF surcharge.

What exactly is broadband service? As far as I am aware, there is no precise, formal definition that has been adopted by the FCC or by general consensus.[2] The FCC defines "advanced telecommunications capability and advanced services" as having the capability to support both upstream and downstream transmission speeds over 200 thousand bits per second in the last mile to the end user.[3] Services offering these speeds in at least one direction are described by the FCC as "high-speed." As technology progresses, the practical difference between high-speed and advanced services will probably vanish, as the remaining "high-speed" services either disappear or are upgraded to become "advanced." But for the present, we recommend that the Commission adopt the slightly wider category denoted by "high-speed" as its working definition for "broadband service."

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[1] Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telcom, Inc., Consolidated Telephone Company, Dalton Telephone Company, Inc., Eastern Nebraska Telephone Company, Elsie Telecommunications, Inc., Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hemingford Cooperative Telephone Company, Hershey Cooperative Telephone Company, K & M Telephone Company, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Southeast Nebraska Telephone Company, Stanton Telecom, Inc., and Three River Telco.

[2] *See* http://news.bbc.co.uk/2/hi/technology/3563320.stm; *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking ("*Wireline Broadband NPRM*") (2002), note 2.

[3] *Id.*

Defined in terms of transmission speeds, broadband services have been around for decades - leased by common carriers as high-capacity dedicated private line circuits to government agencies, research facilities and large corporations. Those organizations use such broadband services in constructing and operating their own private networks. These private line services - which might be used to link two campuses together across town or across the country - have always been considered common carrier services - "telecommunications services" under the 1996 Telcom Act - and have always been, and remain, subject to universal service assessment. The important feature of these "traditional" broadband services is that they transport information from one end-user location to another end-user location.

The broadband services that concern us here today are those that are used not to connect two end-user locations, but rather to gain access to a network. The vast majority of broadband services are used for access to one particular network - the Internet. But broadband services are also used for access to other networks that deliver other kinds of services - such as voice services that connect to the public switched telephone network. The broadband services that are used for access to an IP network that delivers such voice service are precisely those that we addressed in our comments and testimony in this Commission's NUSF-40 docket. These broadband services are an essential component in a VoIP service offered by a facilities-based VoIP provider.

So our focus today is on broadband services that are used for access to the Internet. But before we narrow our focus, I would like to mention just a few rather broad topics, to provide a context to the issue that concerns us today.

I. Networking trends

A. Convergence

One word that is often used to describe some of the changes that have occurred in networking over the last several decades is "convergence." Back in the 1960s, people started one kind of convergence revolution by connecting computers to communications lines for the first time. Initially, they built networks that delivered expensive computing power to people at remote locations. This merging of computing and communications eventually produced the Internet as we know it today. In the late 1990s, when nearly every organization of any size had its own private broadband network - also known as a local area network or LAN - LAN managers began to use those networks to carry, in addition to PC and mainframe computer data, voice and video as well. This was another kind of "convergence."[4] You might call it "everything over the LAN."

There are two kinds of convergence trends that are important for us today. One could be called "everything over the Internet" - meaning that, in addition to computer data, voice and video are starting to ride the Internet, too. The other important convergence trend occurring now is that a wider assortment of transmission technologies is being used to

[4] http://www.cio.com/archive/021597/et.html

connect people and their gadgets to the Internet. So we have a sort of dual convergence - the Internet is being used to carry more and more kinds of user information, and at the same time, more and more kinds of transmission media are being used to connect to it. Not so long ago, there was a more or less fixed relationship between a type of transmission medium and the type of service delivered over it. Twisted pairs of copper wire carried voice services and coaxial cable carried broadcast video services. Essentially, a particular service was vertically integrated - or "stovepiped" - on top of a particular transmission medium. But the dual convergence trends that I am describing have made this stovepipe thinking obsolete. That model doesn't fit with reality any more. Unfortunately, though, some of our regulations have not been adapted to these new realities - yet. But we remain hopeful. And we view this proceeding as a positive step in that direction.

Some may object to the notion of "everything over the Internet" as a "pie-in-the-sky" idea, because the performance characteristics of today's Internet and the limited bandwidth available with today's broadband access technologies just do not support good quality video, for example. That is true - for today's Internet. Our present Internet is commonly called a "best-effort" network, meaning that it does the best it can, with no guarantees of performance, and when traffic levels rise to the point of congestion, everyone's performance is degraded. And the broadband Internet access services now commonly available, with maximum bit rates of a few million bits per second, are really not adequate for delivery of an HDTV signal, for example. But major advances have been made on both of these fronts. Switches and routers for the Internet backbone that can deliver guaranteed performance are now being produced,[5] and broadband service providers are making upgrades to their local distribution facilities that will permit data transport to customers at a few dozen megabits per second[6] - enough to carry high quality video. So this is not "pie-in-the-sky;" it is happening. Not overnight, but the technology exists and is being deployed. We believe that not only is the Internet here to stay, but that it will only get bigger, faster and better, and that its role in most Nebraskans' daily lives will only expand.

B. Functional specialization

Another important trend that has been underway since the inception of the Internet in the late 1970s is that the general-purpose computer systems that once formed the core of the Internet have migrated to the periphery of the network. Essential switching and routing functions are now being performed by devices dedicated solely to such functions and other network management functions. Long gone are the days when a professor at Caltech would use his mainframe computer as a mere vehicle for logging on to another mainframe computer at Stanford - a typical example of early Internet communications. No longer do e-mail messages make their journey from sender to recipient in a series of hops from mainframe to mainframe, or from PC to PC. The core - or switching fabric - of today's Internet is made up of highly specialized communications devices - switches

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[5] *See* http://www.networkingpipeline.com/news/21100014.

[6] *See* http://www.sbc.com/gen/press-room?pid=5838; http://telephonyonline.com/mag/telecom_bellsouth_looks_toward.

and routers made by a small group of companies led by Cisco Systems and Juniper Networks.[7] At the same time, the information resources available via the Internet have moved to the periphery of the network. This trend is the opposite of convergence; it is specialization - a division of labor according to function; and it is a trend that has essentially run its course. What we see now is a clear separation of the communications computers that do all the switching and routing functions of the Internet - which form the Internet's backbone, its subtending networks and its access infrastructure - from the general purpose computers that house the information value of the Internet in their databases, web sites and e-mail servers, which sit on the edges and are reachable through the network.

This high degree of separation between the information-rich computers at the edges of the Internet and the communications-intensive devices at its core demonstrates that the Internet has become a means of delivery - not a source of information. Internet access is, above all else, an essential part of that delivery system.

In this as in many other ways, the Internet itself continues to become almost a utility on which the public depends for access to information and other services; it resembles more and more a public resource. And so, access to the Internet, in whatever form, becomes more and more a matter of concern for those, like yourselves, who serve the public interest. This concern is entirely consistent with the language in the NTUSF Act calling for the promotion of access to advanced telecommunications services and information services throughout Nebraska.[8]

C. Broad NUSF assessment base

The final general topic that I would like to address concerns the desirability of establishing a broad base of services that contribute to universal service funding. In the NTUSF Act, the Nebraska Legislature declared one of the principles to support the preservation and advancement of universal service to be that "[a]ll providers of telecommunications services" should contribute.[9] Not just providers that use the North American Numbering Plan, not just those companies with a long history of providing telecommunications services, but all providers of telecommunications services should contribute. Furthermore, the NTUSF Act not only empowers, but directs this Commission to "require every telecommunications company to contribute to any universal service mechanism established by the Commission",[10] where "telecommunications company" is defined in the NTUSF Act as an entity that offers telecommunications service for hire in Nebraska intrastate commerce.[11]

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[7] *See* http://www.findarticles.com/p/articles/mi_m0IGK/is_19_15/ai_79757052; http://telephonyonline.com/mag/telecom_junipers_ciscos_products/ .
[8] *See* Neb. Rev. Stat. § 86-323 (2) and (3).
[9] *See* Neb. Rev. Stat. § 86-323 (4).
[10] *See* Neb. Rev. Stat. § 86-324 (2)(d).
[11] *See* Neb. Rev. Stat. § 86-322.

So, among the many duties of this Commission is to recognize a telecommunications service when it emerges in the marketplace - regardless of whether the entity offering the service calls it a telecommunications service, and regardless of whether it is used in conjunction with the Internet. By maintaining and expanding a contribution base that includes all providers of telecommunications services, as Nebraska law requires, the Commission will preserve the integrity of Nebraska's universal service program. We believe this reflects the central guiding principle embodied in the very concept of universal service - that all users of all kinds of telecommunications services contribute to a system that "ensures that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices."[12]

II. Assessment of NUSF Surcharge on Broadband Services

Getting back to our focus on assessment of the NUSF surcharge on broadband services used for Internet access, the rural companies I am representing today believe the same four basic issues apply in this docket as in your investigation in the NUSF-40 docket of the extent to which VoIP services should be subject to NUSF contribution requirements. Those basic issues are, first: Is the service a telecommunications service? Second: Is a portion of the service intrastate? Third: Which entities involved in providing broadband Internet access are actually providing a telecommunications service? And finally: What is the Commission's authority to assess the NUSF surcharge on the service?

My intent is to address these four issues using only two specific types of broadband service - DSL and cable modem. Of the various transmission media used to provide broadband, DSL and cable modem account for well over ninety percent of the market.[13] Also, DSL and cable modem have, I think, enough differences and similarities that can serve to illustrate the points I will be making. I should add that all twenty-two of the companies I am representing today offer DSL service under terms of an interstate access tariff filed with the FCC either through NECA or through other means. In addition to DSL service, many of the companies also offer Internet access service, acting as Internet service providers, or ISPs - either directly or through an affiliate.

A. Is broadband service a "telecommunications service"?

The answer to this first question - whether broadband service used for Internet access is a telecommunications service - is not obvious, because the current regulatory classifications of DSL and cable modem service are different. DSL, everyone agrees, is a telecommunications service, as defined by the 1996 Telecom Act. First offered in 1998, DSL is usually tariffed at the federal level as an interstate special access service. As such, it contributes to the federal universal service fund. On the other hand, cable modem service has, to my knowledge, never been treated by regulators as a telecommunications service, and does not contribute to universal service.

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[12] *See* Neb. Rev. Stat. § 86-317.

[13] *See* http://www.leichtmanresearch.com/press/030804release.html; http://www.dslforum.org/PressRoom/Q3_2004_DSL_Data.pdf.

The proper regulatory treatment of broadband services has been the subject of several FCC proceedings[14] and a few federal court cases in recent years. One such case, in which the Ninth Circuit Court of Appeals vacated an FCC order, and which has a direct bearing on the question we are addressing here today, is now before the U.S. Supreme Court.

The case I am referencing is *Brand X Internet Services v. FCC.*[15] This case presents the issue of the proper classification of cable modem service: Is it a telecommunications service, an information service, or a combination of the two? The story of this case has three major milestones so far, starting with a decision by the Ninth Circuit Court of Appeals in June of 2000, in *AT&T Corp. v. City of Portland,*[16] in which the court determined that cable modem service is a combination of an information service and a telecommunications service. A few months later, the FCC opened a proceeding to investigate this issue, and in March of 2002 issued a declaratory ruling[17] in which it found cable modem service to be an interstate information service, without a separate offering of a telecommunications service. Seven petitions for review of that FCC ruling were filed in three different federal circuit courts. All were consolidated into the *Brand X* case I mentioned earlier and were assigned to the Ninth Circuit for disposition. The third milestone in this story is the Ninth Circuit's October 2003 decision in *Brand X* that affirmed its previous decision in *City of Portland*, thereby vacating the FCC's 2002 ruling. It is this decision of the Ninth Circuit that has been appealed to and accepted for review by the United States Supreme Court, and that is scheduled for oral argument on March 29, 2005.

When you look past the rhetoric that surrounds the issue of whether broadband service is a telecommunications service, and cut through all the legal arguments relating to deference to the expert agency or deference to legal precedent, the outcome of this whole story turns on one fundamental question: Was the FCC's interpretation of the statute a permissible one? In other words, when the FCC concluded in its 2002 ruling that cable modem service is strictly an information service, did it interpret in a rational manner the definitions of "information service,"[18] "telecommunications"[19] and "telecommunications service"[20] provided by Congress in the 1996 Telecommunications Act, as those definitions may apply to cable modem service? We think not.

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[14] *See e.g.,* Wireline Broadband NPRM; *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Declaratory Ruling and Notice of Proposed Rulemaking ("*Cable Modem Ruling*") (2002).

[15] *Brand X Internet Services v. FCC*, 345 F.3d 1120 ("*Brand X*") (9th Cir 2003).

[16] *AT&T Corp. v. City of Portland*, 216 F.3d 871 ("*Portland*") (9th Cir. 2000).

[17] *See, Cable Modem Ruling.*

[18] 47 U.S.C. §157(20) defines "information service" as:
... the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

[19] 47 U.S.C. §157 (43) defines "telecommunications" as:
... the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

[20] 47 U.S.C. §157 (46),"telecommunications service" is defined as:

Everyone agrees that the transmission capability that underlies cable modem Internet access service constitutes "telecommunications." The dispute is whether cable modem Internet access service providers are offering this telecommunications capability for a fee directly to the public, because, if they are, then not only are such providers using telecommunications as an input to their information service offering, but further, according to the language of the Act, they are providing a "telecommunications service."

The FCC, in its Cable Modem Ruling, made the observation that cable companies providing cable modem Internet access service are not offering their underlying cable modem transmission service independently from their Internet access service.[21] Actual corporate behavior showed no history of a separate offering to the public of this pure transmission capability. Hence, the FCC concluded that no telecommunications service, only an information service, was being offered to the public.

The unreasonableness of the FCC's decision becomes apparent when a comparison is made regarding the FCC's classification of the underlying transmission components of Internet access service provided over DSL with the underlying transmission components of Internet access service provided over cable modem. In the case of Internet over DSL, the FCC maintains the framework it established in its Computer Inquiry decisions - treating the underlying transmission component of the Internet access service as a telecommunications service which either the Internet access provider must purchase from the DSL provider, even if the Internet access provider and the DSL provider are the same company, or the end user must purchase from the DSL provider. But with Internet over cable modem, the FCC claims that because cable companies do not offer the underlying transmission component as a separate service, the transmission component does not constitute a telecommunications service; it is telecommunications, but not a telecommunications service. By this logic, an ISP affiliated with a telephone company that refused to sell its DSL service to anyone besides its ISP affiliate could also claim that its DSL transmission component does not constitute a telecommunications service. The idea that a discriminatory business decision should warrant preferential regulatory treatment is, in a word, absurd.

My earlier comments about specialization in the Internet - about all the information moving to the periphery while the Internet itself simply acts as a delivery mechanism - are especially relevant here. Of all the information services that an Internet user receives over his broadband access link, only a very small portion are actually being provided by the user's ISP. The typical information services provided by an ISP - Domain Name Services, DHCP services, e-mail services, spam filtering, instant messaging - are, generally, of no greater weight than the ISP's mere delivery of content the user has chosen to retrieve from a remote web site or other third-party information service provider. But when the ISP also owns the user's access link facility, the fact that the ISP is providing "telecommunications" for a fee to its end-user customer is even more apparent. We believe, as do most others, that Internet access service provided over DSL

... the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

[21] *See Cable Modem Ruling,* para. 41, 48.

includes both a telecommunications service and an information service component. We also believe that cable modem Internet access is, likewise, a combination of a telecommunications service and an information service. Unfortunately, because cable companies have characterized their telecommunications service as nothing more than an input to their information service, the FCC has failed to recognize that there is, inherent in cable modem Internet access service, a telecommunications service.

Our view is that - for the time being - Internet access service, as provided by ISPs, is properly treated as an information service, but that all forms of broadband transmission used for Internet access, which underlie the ISP's service, are telecommunications services and should be recognized as such by regulators at the state and federal levels. I say "for the time being," because we also believe that a more radical realignment of intercarrier relationships is required in light of the dual Internet convergence trends I described earlier. We believe enlightened and decisive action by the FCC in its intercarrier compensation docket[22] is needed to fully address these concerns.

B. Is a portion of broadband service intrastate?

The second key issue that I identified is whether some portion of broadband service can be properly treated as intrastate. As I stated in my testimony before you in the NUSF-40 hearing, jurisdiction over communications is determined by the ultimate end points of the communication.[23] On the Internet, one of these end points, typically, would be someone's personal computer, while the other might be a server computer hosting many different web sites or an e-mail service. Every packet that is transmitted between these two end points contains addressing information that can be associated with the location of both the sender and the receiver. So the question of identifying geographic locations of end users on the Internet is not one of unfathomable mystery, but rather one of practicality and administrative overhead.

We believe that a substantial portion of Internet traffic is intrastate in nature. Not only do Internet users have interest in local information - often, though not always, hosted on a local web server - but those information services that ISPs typically provide, that I mentioned earlier, e-mail and the others, are typically provided on local servers, meaning at least that portion of the telecommunications occurring over the access link between the user and the user's ISP's servers is likely to be intrastate.

As we noted in the NUSF-40 proceeding, the fact that a service is jurisdictionally interstate for purposes of market entry does not mean that it cannot be treated as a jurisdictionally mixed for purposes of universal service contributions. Cellular service is one example of this.

But as I mentioned earlier, the current situation with DSL is that not only is it tariffed as an interstate service, but it is also contributing to the federal universal service fund. I will

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[22] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, (2001);

[23] *See* Direct Testimony of Tom Bullock filed in Application NUSF-40 dated December 8, 2004, p. 6.

discuss the issue of avoidance of duplicate imposition of Federal and state USF contributions on DSL in a moment.

C. How to identify broadband "telecommunications service" providers?

Proceeding to the third issue of determining which providers of broadband Internet access are offering a telecommunications service, as I noted earlier, we believe the proper regulatory framework for viewing the various entities involved in the delivery of Internet access service is, for now, provided by the FCC's Computer Inquiry decisions. Broadband Internet access service is an information service under the '96 Act, and therefore always delivered via telecommunications. Broadband Internet access service is provided by an ISP to an end user in one of two ways. In one instance, the ISP's information service includes the telecommunications component that the ISP purchases on behalf of the end user from the underlying telecommunications carrier as a telecommunications service. In the other instance, the end user purchases the telecommunications component as a telecommunications service from the same or a different underlying carrier. In the first case, the two types of services are bundled by the ISP and are presented to the end user customer as a package. In the second case, the customer buys the services separately. In either case, the telecommunications that underlies the information service is treated as a telecommunications service - for purposes of universal service assessment - in one and only one transaction in the overall arrangement. In both cases, the user is receiving two distinct services - an information service from his ISP and a telecommunications service either directly from the underlying carrier or through his ISP.

Note that in our first case, where broadband service is bundled with the ISP's information service, one might identify two distinct transactions in which a telecommunications service is being provided: first, by the underlying carrier to the ISP; and second, by the ISP to the end user customer. According to the Computer Inquiry framework, in this scenario the telecommunications service provided by the underlying carrier to the ISP is the one that should contribute to universal service, and not the service the ISP provides to the end user. But when the ISP offering such a bundled service is affiliated with the underlying telecommunications provider, there might be no readily identifiable transaction between those two affiliates. This is typically the case with Internet access service over cable modem. We believe that in these bundled service situations, in which the ISP is providing, for a single fee, both a pure information service and the underlying broadband access service to the end user, and there is no readily identifiable price for the separate telecommunications service, that either some sort of proxy should be established as a measure of the relative value of the information service and telecommunications service components of the service bundle, or the entire price of the service bundle should form the basis for assessment of the NUSF surcharge.

D. What is the Commission's authority to assess broadband service?

With regard to the final issue, concerning the Commission's authority to assess the NUSF surcharge on broadband services, as we noted in our comments and testimony in the

NUSF-40 proceeding, we believe that the Commission has authority under the NTUSF Act to assess the NUSF surcharge on all providers of intrastate telecommunications services. Our NUSF-40 comments and testimony have been made a part of the record in this docket and I will refrain from repeating the contents thereof that relate to this issue.

So, to quickly summarize these four issues, we do believe that broadband Internet access includes the provision of a telecommunications service. We also maintain that a substantial portion of Nebraska users' Internet traffic is exchanged with server computers that are located in the State, causing a portion of the telecommunications service to be intrastate commerce. Our position is that the entity providing the telecommunications service that should be assessed the NUSF surcharge is the underlying facility owner - whether the user's ISP purchases the telecommunications service on the user's behalf or not. For these reasons, we believe the Commission is authorized to assess the NUSF surcharge on all forms of broadband services that underlie Internet access, as long as that assessment does not duplicate the federal USF assessment - which brings me to my final point.

III. DSL, as an interstate service, already contributes to universal service.

As I mentioned earlier, DSL is recognized as a telecommunications service, almost always tariffed at the federal level as an interstate special access service. As such, the federal universal service surcharge is assessed on nearly all DSL revenues collected by telephone companies. I believe that all Nebraska telephone companies have FCC tariffs in effect for DSL service, and I am not aware of any that offer DSL service through other means. Given that fact, we believe that so long as the FCC assesses federal USF surcharge on DSL service as a whole, without recognition of the intrastate component of such service, this Commission is not permitted to additionally assess a state universal service surcharge on DSL service. Such a duplicate assessment would violate the "equitable and nondiscriminatory" standard established by Congress in Section 254(f) of the 1996 Telecommunications Act. We believe this reasoning was affirmed by the Fifth Circuit in its recent decision in *AT&T Corp. v. Public Utility Commission of Texas*,[24] in which it prohibited the Texas PUC from assessing its state universal service surcharge on the interstate services provided by carriers offering both interstate and intrastate services.

We recognize that the point I made earlier regarding Internet traffic being, in reality, partly intrastate and partly interstate, applies as much to DSL as to other forms of Internet access. Thus, the Commission, in the policy it ultimately adopts for assessing broadband services used for Internet access, might well consider various ways to assess the NUSF surcharge on DSL service in order to recognize the mixed jurisdictional nature of Internet traffic. For example, one means of dividing broadband service revenue between the intrastate and interstate jurisdictions would be to apply the "safe harbor" 71.5% and 28.5% jurisdictional division that is used for CMRS traffic. Alternatively, samples of actual Internet traffic could be taken, and combined with geographic data on Internet addresses, might be used to establish a reasonable estimate of the actual jurisdictional division of Internet usage. However, any such split between intrastate and interstate

[24] *AT&T Corp. v. Public Utility Commission of Texas*, 373 F.3d 641 (5th Cir. 2004).

assessment would, in the case of DSL, need to be coordinated between this Commission and the FCC, because, for example, the NECA tariff under which DSL is offered by many of the Companies I represent requires that the federal universal service surcharge be assessed on the full amount of DSL revenue collected.

One suggestion for avoidance of duplicate assessment of universal service surcharges on DSL service would be to compute the NUSF surcharge on the safe harbor or sampled percentage of intrastate usage of DSL service, and to allow a credit against such computed amount equal to the amount of the federal USF assessment on such service. Another approach would be to simply exempt from the NUSF surcharge those broadband services that are assessed the federal USF surcharge.

IV. Conclusion

In summary, we believe that all broadband Internet access services are properly characterized as containing a telecommunications services component, and that the broadband transport capability used in conjunction with that Internet access service constitutes that telecommunications service. Further, we believe this Commission has the authority to assess the NUSF surcharge on either a "safe harbor" or sample-based intrastate portion of broadband services, insofar as that assessment does not duplicate existing federal USF assessment on such services. We believe that this Commission's exercise of its authority to make such an assessment would serve the public interest because of the increasing importance of advanced telecommunications services in the lives of all Nebraskans. This Commission has a duty to ensure that all Nebraskans, not just those located in the cities and towns, have access to advanced telecommunications services at comparable rates. All broadband services, without regard to transmission medium, should be making equitable contributions to the system of universal service support that makes such assess possible.

THE RURAL INDEPENDENT COMPANIES:

ARLINGTON TELEPHONE COMPANY, THE BLAIR TELEPHONE COMPANY, CAMBRIDGE TELEPHONE COMPANY, CLARKS TELECOMMUNICATIONS CO., CONSOLIDATED TELCO, INC., CONSOLIDATED TELCOM, INC., CONSOLIDATED TELEPHONE COMPANY, DALTON TELEPHONE COMPANY, INC., EASTERN NEBRASKA TELEPHONE COMPANY, ELSIE TELECOMMUNICATIONS, INC., GREAT PLAINS COMMUNICATIONS, INC., HAMILTON TELEPHONE COMPANY, HARTINGTON TELECOMMUNICATIONS CO., INC., HEMINGFORD COOPERATIVE TELEPHONE COMPANY, HERSHEY COOPERATIVE TELEPHONE COMPANY, K & M TELEPHONE COMPANY, INC., NEBRASKA CENTRAL TELEPHONE COMPANY, NORTHEAST NEBRASKA TELEPHONE COMPANY, ROCK COUNTY TELEPHONE COMPANY, SOUTHEAST NEBRASKA TELEPHONE COMPANY, STANTON TELECOM, INC., and THREE RIVER TELCO.

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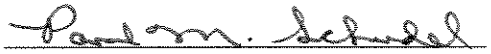
CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2005, the original and five (5) paper copies, together with an electronic copy, of the foregoing Comments were served upon the Nebraska Public Service Commission, by hand delivery.



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